

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**Amy Tripp, Conservator of  
RRKC, a minor,**

Civil No. 21-12859

Plaintiff,

v.

Honorable Victoria A. Roberts  
Mag. Judge Curtis Ivy, Jr.

**United States of America,**

Defendant.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Plaintiff's Motion for Leave to File a Motion for Partial Summary Judgment Regarding an Affirmative Defense will be heard by the Honorable Victoria A. Roberts at a time and date to be set by the Court.

OLSMAN MACKENZIE PEACOCK  
& WALLACE, P.C.

By /s/ Jules B. Olsman

Jules B. Olsman (P28958)

Attorney for Plaintiff

2684 West Eleven Mile Road

Berkley, MI 48072

(248) 591-2300

Dated: May 4, 2023

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**United States of America,**

Defendant.

**PLAINTIFF’S MOTION FOR LEAVE TO FILE A MOTION FOR  
PARTIAL SUMMARY JUDGMENT REGARDING AFFIRMATIVE  
DEFENSE**

Plaintiff, AMY TRIPP, Conservator of RRKC, a minor, by and through her attorneys, OLSMAN MACKENZIE PEACOCK & WALLACE, P.C., by Jules B. Olsman and Ronda M. Little, and does hereby submit Plaintiff’s Motion for Leave to File a Motion for Partial Summary Judgment regarding an Affirmative Defense, as required by the Court’s Scheduling Order. The grounds for this motion are set forth in the attached brief.

On May 2 and 3, 2023, pursuant to Local Rule 7.1 of the United States District Court for the Eastern District of Michigan, Plaintiff's counsel had a telephone conference with Defendant's counsel and outlined the relief sought and the grounds for the motion. The parties have also exchanged correspondence regarding the same (Exhibit 1). Despite reasonable attempts, Plaintiff was unable to obtain concurrence for the relief sought.

OLSMAN MACKENZIE PEACOCK &  
WALLACE, P.C.

/s/ Jules B. Olsman  
JULES B. OLSMAN (P28958)  
RONDA M. LITTLE (P47236)  
Attorneys for Plaintiff  
2684 West Eleven Mile Road  
Berkley, MI 48072  
248-591-2300 / (248) 591-2304 [fax]

Dated: May 4, 2023

UNITED STATES DISTRICT COURT  
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**Amy Tripp, Conservator of  
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Civil No. 21-12859

Plaintiff,

v.

Honorable Victoria A. Roberts  
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**United States of America,**

Defendant.

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE A  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff seeks permission to file a Motion for Partial Summary Judgment, pursuant to Fed.R.Civ.P. 56(a), regarding the affirmative defense that Plaintiff's damages are limited by Mich.Comp.Laws § 600.1483. Plaintiff's First Amended Complaint includes allegations that Dr. Bernardino breached his statutory duty to report child abuse and neglect, pursuant to the Michigan Child Protection Law, Mich.Comp.Laws § 722.621 et seq. (ECF No. 5, paragraph 92(h)(k)(q)(bb)). Defendant pled the medical malpractice damage caps as an affirmative defense (ECF No. 21). In affirmative defense number 10, Defendant asserts in pertinent part:

[T]o the extent Plaintiff and/or infant is entitled to recover medical malpractice noneconomic damages, the damages are subject to Mich.Comp.Laws section 600.1483.

Pursuant to *Lee v Detroit Med. Ctr.*, 775 N.W.2d 326 (Mich.App. 2009) lv to app denied 779 N.W.2d 501 (2010), the failure to report child abuse and/or neglect is an ordinary negligence claim, and therefore not subject to the medical malpractice non-economic damage caps.

The Court's Scheduling Order (ECF No. 27) provides that no dispositive motions are allowed prior to the conclusion of the Settlement Conference without permission of the Court.<sup>1</sup> However, pursuant to Fed.R.Civ.P. 16(b)(4), there is "good cause" to permit early filing of the requested motion as facilitation is scheduled for July 24, 2023, with Robert Riley and a ruling by the Court will help clarify Defendant's exposure in terms of damages.

WHEREFORE, Plaintiff requests leave to file a Motion for Partial Summary Disposition regarding the affirmative defense that damages are limited by Mich.Comp.Laws § 600.1483.

OLSMAN MACKENZIE PEACOCK &  
WALLACE, P.C.

/s/ Jules B. Olsman  
JULES B. OLSMAN (P28958)  
RONDA M. LITTLE (P47236)  
Attorneys for Plaintiff  
2684 West Eleven Mile Road  
Berkley, MI 48072  
248-591-2300 / (248) 591-2304 [fax]

Dated: May 4, 2023

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<sup>1</sup> Currently, a Status Conference is scheduled for August 15, 2023. A Settlement Conference has not been scheduled.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2023, I electronically filed Plaintiff's Motion for Leave to File a Motion for Partial Summary Disposition Regarding Affirmative Defense with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **ZAK TOOMEY** and **BRADLEY H. DARLING**

I further certify that I have mailed by United States Postal Service this filing to the following non-ECF system participants: **NONE**

/s/ Katie M. Little